Monkey business

A CASE STUDY OF ROLES AND RESPONSIBILITIES

The issue of mandates and functions continues to occupy the minds of many local government practitioners, and the question of who is responsible for Cape Town's rebellious baboons is an interesting case study. This article examines the issue and makes suggestions for a possible solution to this particular monkey puzzle.

Problem

The Table Mountain National Park (the Park), which is within the boundaries of the City of Cape Town, is home to a number of chacma baboons. The fact that the Park is enclosed within an urban area exposes the baboons to a number of risks. Firstly, they have limited access to the food that they would usually eat in their natural habitat, so they eat unsuitable food supplied by humans, which can make them ill. They are also vulnerable to injury by cars and other dangers of the urban environment. Because of the stresses of this environment, the baboons harass human communities by raiding their homes and garbage facilities. All of these factors are putting the baboons at very real risk of extinction.

Baboon management

In order to rescue the baboons from extinction and to relieve the communities of the constant menace which they present, a well-designed baboon management programme must be implemented. The programme may include activities such as monitoring the baboons, keeping them away from urban areas, raising awareness about the appropriate treatment of baboons and forbidding, by law, the feeding of baboons.

It may also include a system that restricts the baboons' movement by erecting fences and limits their access to household refuse.

Who is involved?

Three state organs have statutory mandates that intersect with the issue of baboon management. These are the Western Cape Nature Conservation Board (CapeNature), South African National Parks (SANParks) and the City of Cape Town (the City). However, the responsibilities of each of these state organs pertaining to baboon management are not precisely described. The physical boundary of the Park is not helpful as a marker of responsibility because the park is situated in an urban area.

However, it is important to determine the constitutional and statutory mandates with regard to baboon management. For instance, if the City engaged in baboon management without a clear legal basis, its actions would be considered to fall outside of its municipal services and the financial costs thereof would be deemed to be unauthorised expenditure. This article therefore attempts to describe the role of each of the three bodies, and more specifically that of the City, in baboon management. But first let us see how the constitutional and statutory mandates of these state organs intersect with baboon management.

Functional interpretation of competencies

The City does not have a power that explicitly relates to baboon management. Nevertheless, the functional competencies of the City as enshrined in Schedules 4(B) and 5(B) of the Constitution give the City authority that intersects with baboon management. Constitutional competencies must be interpreted in a functional way, so as to empower the relevant sphere of government with powers that are appropriate and relevant to it fulfilling its functions. The definition of any municipal power or function must be interpreted with the constitutional objects of local government in mind. One such object is to 'promote a safe and healthy environment' (s152).

Public nuisance

One competency that is particularly important is the constitutional competency of any municipality to deal with the 'control of public nuisances' (Constitution, Schedule 5B).

The City can use this competency to control public nuisances in order to pursue a safe and healthy environment. The baboons cause a public nuisance by roaming in urban environments, threatening the safety of residents, property and goods, and causing unhealthy conditions. Therefore, the City is constitutionally mandated to engage in baboon management by virtue of its authority to control public nuisances.

Refuse removal and municipal health

Another competency of the City which pertains to a safe and healthy environment is refuse removal. The competence of the City with regard to refuse removal is not limited to removing garbage left by the road for collection. It rather empowers the City to establish and operate a system for the collection, removal and disposal of household and other refuse from premises within its municipal area with a view to pursuing a safe and healthy environment. If anything impedes this pursuit, the City should be able to intervene.

It is obvious that the baboons, by their continuous rummaging through garbage, detract from the City's pursuit of a safe and healthy environment. If engaging in baboon management assists in removing a specific impediment to the refuse collection system that the City has established in pursuit of a safe and healthy environment, the City is justified in adopting such strategies and appropriating funds towards them.

Other stakeholders

CapeNature also has mandates relating to baboon management. It is governed by the Western Cape Nature Conservation Board Act of

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1998, and its object is 'to promote and ensure nature conservation and related matters in the Province'. It pursues this objective through, among other methods, 'wildlife management, which includes proactively managing conflict between humans and wildlife'.

CapeNature is also mandated to 'give advice and guidance to persons who are engaged in nature conservation in the Province or elsewhere'. The provision of guidance in the form of training and education to persons engaged in baboon monitoring falls within this mandate. Moreover, Cape Nature must work in cooperation with the national, provincial and local spheres of government.

Thus it can be argued that CapeNature has the authority to engage in baboon management, because it is in line with both the statutory objects of the institution and with some of its functions and powers.

SANParks is the third organ with mandates related to baboon management. As a protected area in terms of the National Environmental Management: Protected Areas Act (Act 57 of 2003), the Table Mountain National Park is managed by SANParks. Section 55(2)(g) of the Act permits SANParks, as the authority designated to manage the protected area, to 'take reasonable steps to ensure the security and well-being of visitors and staff'. One of the objectives of baboon management, as already pointed out, is to ensure the security of residents. It cannot be that the Act mandates SANParks to ensure the security of visitors to its parks but not that those who permanently live inside the park.

In addition, the well-being of the chacma baboons in the Park is one of the objectives of baboon management. This objective falls within SANParks' mandate in terms of section 17 of the Act. Furthermore, the gathering of information on the movement and behaviour of the chacma baboons also intersects with the objectives of SANPARKS as set out in that section.

SANParks thus has the authority to engage in baboon management as it relates to both the statutory objects of the Park and some of SANParks' functions and powers.

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Implementation protocol

What to do when two or more organs of state all bear some responsibility and the law is not clear as to how it is divided? In such cases, a watertight division of mandates, argued on legal principles, is neither practically possible nor desirable. A strict legal separation of mandates cannot capture an uncooperative reality such as the issue of baboon management.

The Constitution instructs all organs of state within each sphere of government to 'cooperate with one another in mutual trust and good faith by coordinating their actions and legislation with one another'. An intergovernmental agreement among the three organs of state discussed here could provide a platform for such cooperation. The Intergovernmental Relations Framework Act (Act 13 of 2005) offers an enabling legal framework for the conclusion of implementation protocols, which may be particularly useful in instances such as these, where overlapping competencies exist. The three organs should therefore consider entering into an implementation protocol describing their responsibilities with regard to baboon management. Such a protocol does not give carte blanche, though. The delineation of responsibilities included in it must be informed by the relevant objectives that the respective organs of state are required to pursue by law.

The most relevant object of CapeNature is 'nature conservation in the Province', that of SANParks is the protection of biodiversity in Table Mountain National Park, and that of the City is to 'promote a safe and healthy environment'.

Therefore, while the City's interest in and authority over baboon management emanates primarily from its concern with communities and neighbourhoods, CapeNature and SANParks derive theirs from a concern with preservation, conservation and study. We suggest that this distinction be borne in mind when delineating responsibilities in an intergovernmental agreement.

Based on the municipality's constitutional objects, we argue that the following aspects of baboon management would fall within the City's domain:

- funding or employing baboon monitors to follow and manage baboons in the Park;
- enacting by-laws prohibiting human interactions with baboons that compromise a safe and healthy environment (eg the feeding of baboons);
- enforcing those by-laws;
- ensuring a waste disposal strategy that reduces baboons' access to refuse (eg baboon-proof bins and rules on refuse collection);
- removing baboons from urban areas – by force, if need be;
- rendering specific urban areas 'unattractive' for baboons, by using fencing or other appropriate means; and
- facilitating community action in response to baboon invasions.

The following are some aspects of baboon management that would fall within the domain of CapeNature and SANParks:

- funding or employing baboon monitors to follow and manage baboons in the Park;
- activities specifically geared towards the well-being of individual baboons (eg health care);
- activities specifically geared towards ensuring and maintaining an appropriate habitat for the baboons; and
- activities specifically geared towards the study of chacma baboons.

Those residents of Cape Town who are affected by the baboon problem would be well served by a cooperative solution proving that the three spheres of government can outmanoeuvre a few baboons.

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